IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1471 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUDHABEN W/O. DHIRUBHAI CHHAGENBHAI PATEL

Versus

COMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1471 of 2003

MR CHETAN B RAVAL for Petitioner No. 1

MS HARSHA DEVANI, AGP, for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/05/2003

ORAL JUDGEMENT

The petitioner is a lady detenu. She is detained as a bootlegger under PASA by order dated 10.11.2002. Along with the detention order she is also served with

the grounds of detention. There is reference about two offences under the Bombay Prohibition Act which are filed against the petitioner. There is also reference about statement of some witnesses. The authority having satisfied about the prejudicial activities of the petitioner has detained her under PASA. The said order is challenged at the instance of the petitioner detenu.

2. On behalf of the petitioner, it is submitted that the last registered offence against the petitioner is dated 1.10.2002 and the detention order is passed as late as on 10.11.2002. It is submitted that there is delay of about 41 days in passing the detention order. It is submitted that if really the activities of the petitioner were such which were required to be curbed immediately, it was not necessary for the detaining authority to wait for such a long time as delay in passing the detention order frustrates the entire object of preventive detention. In this behalf, learned advocate for the petitioner relies on the decision of this Court in Special Civil Application No. 5321 of 2002 (Coram: R.P. Dholakia, J) and particularly para 4 of the said judgment which reads as under:-

> 4. It appears that the last offence is registered against the detenu on 28.3.2002 and the order of detention has been passed on 30.4.2002 and hence, there is a delay in passing the order of detention. No affidavit has been filed either by the detaining authority or by the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

3. In the instant case, the State has not filed any reply explaining the delay in any manner. As such no reply has been filed at all. The said fact is, therefore, not controverted by appropriate reply. In that view of the matter, the petition is required to be allowed on the ground of delay in passing the order of detention and accordingly the detention order is required to be quashed and set aside.

4. For the foregoing reasons, the petition is allowed. The order of detention dated 10.11.2002 is quashed and set aside. The detenu, Smt. Sudhaben wf/o Dhirubhai Chagganbhai Patel, is ordered to be set at

liberty forthwith, if she is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J)

zgs/-